STATE OF MICHIGAN

COURT OF APPEALS

VALERIE JOHNSON SARR and SARAH JONES, Next Friend of SHARDA JONES, Minor, Plaintiffs-Appellees, V KENTUCKY FARM BUREAU INSURANCE COMPANY, Defendant-Appellant, and CORLENE LARKS and MIRAC, INC., d/b/a ENTERPRISE RENT A CAR, Defendants.	UNPUBLISHED April 8, 2003 No. 238677 Wayne Circuit Court LC No. 01-128576-NI

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant Kentucky Farm Bureau appeals by leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(1). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Likewise, whether the trial court has personal jurisdiction over a party is reviewed de novo on appeal. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Mildred Streeter, a Kentucky resident, rented a car from Enterprise Rent A Car and drove to Michigan to visit relatives. While in Michigan, she was involved in an automobile accident. Plaintiffs were passengers in that car when it was rear-ended by defendant Larks, an uninsured motorist. Plaintiffs filed this action for damages. They sought first-party benefits from Kentucky Farm Bureau (KFB), Streeter's no-fault insurer.

Plaintiffs concede that Michigan courts cannot exercise general personal jurisdiction over defendant; the only issue is whether the courts can exercise limited personal jurisdiction. This

requires a two-part inquiry. "First, we ascertain if jurisdiction is authorized by MCL 600.715; MSA 27A.715 (Michigan's long-arm statute). Second, we determine if the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment." *Aaronson v Lindsay & Hauer Int'l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999). "The plaintiff bears the burden of establishing jurisdiction over a defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition." *W H Froh, Inc v Domanski*, 252 Mich App 220, 226; 651 NW2d 470 (2002).

Plaintiffs have asserted that defendant is subject to jurisdiction under MCL 600.715(1), which requires that defendant transact any business in this state and that the cause of action arise out of that business. *Neagros v Valmet-Appleton, Inc*, 791 F Supp 682, 687 (ED Mich, 1992); *LAK, Inc v Deer Creek Enterprises*, 885 F2d 1293, 1298 (CA 6, 1989).

The evidence showed that defendant did not conduct business in Michigan and did not have any offices or agents located here; its underwriting of insurance policies is limited to Kentucky. Its sole contact with the state is that its insured traveled to Michigan and was driving the car in which the plaintiffs were passengers when an accident occurred. Nor is there any evidence that defendant filed a certificate of compliance with Michigan no-fault laws pursuant to MCL 500.3163. See *Kriko v Allstate Ins Co*, 137 Mich App 528, 532-533; 357 NW2d 882 (1984). Although the possibility of an automobile accident was foreseeable, "[t]he foreseeability of causing injury in another state is not a 'sufficient benchmark' for exercising personal jurisdiction over an out-of-state defendant who has not consented to suit there." *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 666-667; 411 NW2d 439 (1987). That aside, the focus is on the relationship between the defendant or its agent and the state and defendant did not cause plaintiffs' injury. See MCL 600.715(2).

Even assuming the courts could exercise jurisdiction under § 715, plaintiffs must still show that defendant has sufficient connection with the state such that the exercise of jurisdiction is consistent with due process requirements. This inquiry involves a determination whether the defendant "purposefully established 'minimum contacts'—a sufficient nexus with Michigan—so that requiring [it] to defend itself in a suit in Michigan does not offend traditional notions of 'fair play and substantial justice.'" *Comm'r of Ins v Albino*, 225 Mich App 547, 559; 572 NW2d 21 (1997), quoting *Int'l Shoe Co v Washington*, 326 US 310, 320; 66 S Ct 154; 90 L Ed 2d 95 (1945).

In other words, the Court must "determine whether the defendant purposely availed itself of the privilege of exploiting Michigan business opportunities." *Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 309; 562 NW2d 640 (1997). "A 'purposeful availment' is something akin either to a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan, something more than passive availment of Michigan opportunities." *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978). Stated another way, the defendant must deliberately engage in significant activities in the state or create such continuing obligations between itself and the state's residents such that it is reasonable to require the defendant to submit to the burden of litigation in the state. *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 285; 636 NW2d 291 (2001).

The evidence discloses no contacts between defendant and Michigan apart from its insured's visit here. However, the defendant's contacts with the forum state must be analyzed in terms of the defendant's own actions rather than the unilateral activity of others. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 667-668; 411 NW2d 439 (1987). While plaintiffs argue that the fact that benefits became payable under defendant's policy after the accident occurred here provides sufficient minimum contacts, "[i]t is not enough . . . that the forum state is the 'center of gravity' of the controversy, or the most convenient location for litigation." *Khalaf, supra* at 147. Accordingly, we find that the trial court erred in denying defendant's motion for summary disposition.

We reject plaintiffs' contention that defendant's motion was premature because discovery was still open. Although discovery was incomplete, that alone did not preclude the court from ruling on defendant's motion. "If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence." *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). Here, plaintiffs have not identified any evidence which might support a finding of jurisdiction apart from the fact that defendant might have filed a certificate of compliance. "An unsupported allegation which amounts solely to conjecture does not entitle a party to an extension of time for discovery, since under such circumstances discovery is nothing more than a fishing expedition to discover if any disputed material fact exists between the parties. *Pauley v Hall*, 124 Mich App 255, 263; 335 NW2d 197 (1983).

Reversed and remanded for entry of a judgment in favor of defendant Kentucky Farm Bureau. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage